

**BEFORE THE PUBLIC UTILITIES COMMISSION OF  
THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking to Consider  
Regulating Telecommunications Services  
Used by Incarcerated People

Rulemaking 20-10-002  
(Filed October 8, 2020)

**COMMENTS OF THE UTILITY REFORM NETWORK  
ON THE COMMISSION'S ORDER INSTITUTING RULEMAKING**

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## **I. INTRODUCTION**

The Utility Reform Network (TURN) submits these Opening Comments in accordance to the Order on Instituting Rulemaking (*OIR*) to Consider Regulating Telecommunications Services Used by Incarcerated People, issued by the Commission on October 19, 2020.<sup>1</sup>

This proceeding will unveil the situation that so many California families are currently experiencing, the market for calling services offered at incarceration and detention facilities in California is not ensuring that vital communications services are affordable and accessible. For many, the cost of these calling services leads to debt or real choices of whether to communicate with their loved ones. TURN believes that the Commission has ample authority to address the sweeping market failures that plague this industry and that may otherwise continue without a regulatory spotlight that will better establish rules of the road.

Below, TURN raises several considerations to refine the scope of this proceeding and offers responses to the questions posed by the OIR. TURN urges the Commission to consider its scope broadly to include calling services offered to those incarcerated or detained in California, and their families and other support systems, regardless of type of facility or the type of technology used to offer these services. This review should also include ample comment requests for rates and associated costs, terms and conditions offered today along with methodologies to ensure just and reasonable rates. In addition to the robust comment requests from parties, TURN requests that the Commission hold Public Participation Hearings so that the record in this proceeding may benefit from hearing full accounts from the very families that have lived with these situations.

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<sup>1</sup> “Order Instituting Rulemaking to Consider Regulating Telecommunication Services Used by Incarcerated People,” R. 20-10-002 (Issued Oct. 19, 2020) (*OIR*).

## II. THE RECORD SHOULD SUPPORT A FINDING OF A MARKET FAILURE THAT WILL SUPPORT COMMISSION ACTION

Inmate calling services, hereinafter “incarcerated/detainee calling services” (“IDCS”) provided by service providers in California, suffer from market failures. These market failures are reflected at the state, county, and local levels throughout California where IDCS service providers secure multi-year contracts for the right to be the exclusive service provider within the facilities.<sup>2</sup> For their part, IDCS users (individuals who are incarcerated or detained and their families) must use the IDCS service provider to communicate with their loved ones, social services, legal counsel and other support systems, and must pay for these services at the contract rates agreed to with the facility.

The rates for these services are not only “egregiously high,” as the FCC has recognized, but discriminatory and inequitable.<sup>3</sup> On average, an IDCS user in California will pay 2.8 times more for a call from a jail, where short-term stays are the norm and *immediate* access to phone services upon detention is necessary, than for a call from a prison.<sup>4</sup> And for those calling from a local jail, the cost can be as high as \$17.80 for a 15-minute call.<sup>5</sup> For minors incarcerated or detained in juvenile facilities in California, costs range from county to county, where some calls are free

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<sup>2</sup> The state agency in charge of IDCS contracts for state facilities has contracted with the same company for twenty years. See GTL, “CDCR Inmate Telephone Information” (last visited Nov. 2, 2020) <https://www.gtl.net/friends-and-family-information/cdcr-inmate-telephone-information/> (stating that “[f]or almost 20 years, the California Department of Corrections and Rehabilitation (CDCR), has been receiving inmate/ward telephone services from GTL”). See also California Department of Corrections and Rehabilitation, “Receiving Calls from Inmates and Wards” (last visited Nov. 2, 2020) <https://www.cdcr.ca.gov/visitors/receiving-calls-from-inmates-and-wards/>.

<sup>3</sup> *OIR* at p. 3-4.

<sup>4</sup> Wagner, P. and Jones, A., Prison Policy Initiative, “State of Phone Justice: Local jails, state prisons and private phone providers” (Feb. 2019) [https://www.prisonpolicy.org/phones/state\\_of\\_phone\\_justice.html](https://www.prisonpolicy.org/phones/state_of_phone_justice.html) (presenting data from 2018) (Wagner State of Phone Justice, 2019).

<sup>5</sup> *Id.*

but in others the cost for a 15-minute call ranges from \$2.40 in Solano County to \$13.65 in San Benito County.<sup>6</sup>

While in the wake of the COVID-19 pandemic, some service providers are offering limited free or reduced fee services,<sup>7</sup> these are temporary measures. As discussed below, TURN urges the Commission to analyze IDCS services as they have historically been provided so that it can craft meaningful and workable long-term solutions to the market failures and inequities that have plagued this industry for decades.

Within this market framework, TURN illuminates the extent to which the market affects vulnerable communities, who unlike other rate payers, do not have access to competitive service provider offerings. The *OIR* correctly identifies the stakeholder communities that share a common interest in affordable and equitable access to calling services, but that also each have unique needs that the Commission must address in this docket. For example, adults incarcerated or detained, and their families, place high value in maintaining a connection despite call costs. Martin from New York, an incarcerated individual, reflects that “with or without visits, the phone is a lifeline in prison.”<sup>8</sup> He understands both from the perspective of a child with a father in prison and as a parent incarcerated himself, “costs of calls should never separate families.”<sup>9</sup>

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<sup>6</sup> The Financial Justice Project, Young Women’s Freedom Center, and Children’s Defense Fund-California, In California, how much do parents pay to talk to their children who are locked up in county juvenile facilities (Oct. 2020) <https://sfgov.org/financialjustice/sites/default/files/2020-08/%28Community%29%20%23PriceOfJustice%20Juvenile%20Phone%20Calls%20%281%29.pdf> (Juvenile Facilities Phone Calls Report).

<sup>7</sup> Habeshian, S., KTLA, “California inmates granted free calls following halted visitations amid coronavirus fears” (Updated Apr. 1, 2020, 10:33 PM) <https://ktla.com/news/california/california-inmates-granted-free-calls-following-halted-visitations-amid-coronavirus-fears/>.

<sup>8</sup> Worth Rises, #ConnectFamiliesNOW, Our Stories (last visited Nov. 8, 2020) <https://connectfamiliesnow.com/stories>.

<sup>9</sup> *Id.*

Zoe from Massachusetts, shared that “with each call to him, [she] had to weigh the importance of [their] human connection with the cost,” adding that “[t]here is nothing more degrading than that.”<sup>10</sup> Moreover, minors or youth, incarcerated or detained and their families face budget challenges as well. A mom, Angelica, chose between putting her son in sports or paying for the IDCS phone bill to speak with her daughter in a Los Angeles juvenile hall. Angelica allowed her daughter to call home using IDCS services as much as she wanted because Angelica knew her daughter needed to hear her mother’s voice; the phone bill was very high.<sup>11</sup>

TURN also urges the Commission to invite comment on the extent to which the market affects other vulnerable communities including the immigrant population detained for ICE-related matters<sup>12</sup> and the individuals detained in state adult and juvenile psychiatric hospitals.

In general, each of these vulnerable communities’ experience market failure at all levels of government because IDCS services present the only option for them to communicate with external legal resources, support systems and their families. A study of families with incarcerated family members showed that a third of the families went into debt because of the high cost of maintaining contact with their family members.<sup>13</sup>

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<sup>10</sup> Worth Rises, #ConnectFamiliesNOW, Our Stories (last visited Nov. 8, 2020) <https://connectfamiliesnow.com/stories>.

<sup>11</sup> Juvenile Facilities Phone Calls Report at 1.

<sup>12</sup> Pursuant to state law, the California Department of Justice issued a comprehensive report in February of 2019 regarding the conditions of the 10 immigration detention facilities in California. California Department of Justice, Immigration Detention in California – February 2019, The California Department of Justice’s Review (Feb. 2019) <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/immigration-detention-2019.pdf> (CA DOJ Immigration Detention Study); Assembly Bill 103, codified in Section 12532 (2017, Ting) enacted June 27, 2017 (requires the Attorney General to review “county, local, or private locked detention facilities” that house or detained noncitizens adults or accompanied or unaccompanied minors).

<sup>13</sup> Saneta deVuono-powell, Chris Schweidler, Alicia Walters, and Azadeh Zohrabi. Who Pays? The True Cost of Incarceration on Families. Oakland, CA: Ella Baker Center, Forward Together, Research Action Design, at 9 (2015).

More recently, the in-person visit limitations<sup>14</sup> in the past few months due to fear of the spread of COVID-19 among the incarcerated or detained populations,<sup>15</sup> has heightened the awareness, and deepened the need, to address the plain fact that the IDCS market in California is unfair to the consumers of these services. The Commission's proceeding is timely, in part, because of the changes implemented by these facilities as a result of the pandemic, but the Commission's intent to directly and meaningfully address these issues is appropriate also in the context of the long term, harmful, effects the unreasonable rates, terms and conditions for these critical services have had on these vulnerable communities.

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<sup>14</sup> Board of State and Community Corrections, Juvenile Suspensions of Standards Dashboard (last visited Nov. 6, 2020) <https://app.smartsheet.com/b/publish?EQBCT=ba9b83f39b4a46dd9ea8d8a889c56039> (presenting data that juvenile facilities have suspended in-person visitation since March 2020 in the following counties: Contra Costa County, Fresno County, Humboldt County, Imperial County, Kern County, Madera County, Marin County, Monterey County, Napa County, Orange County, Placer County, Riverside County, San Diego County, San Francisco County, San Joaquin County, Santa Cruz County, Solano County, Sonoma County, Stanislaus County, Tulare County, and Ventura County). The BSCC regulations state that the facility may “provide access to technology as an alternative, but not as a replacement, to in-person visiting.” State of California, Board of State and Community Corrections, Title 15 Minimum Standards for Juvenile Facilities, Title 15 Crime Prevention and Corrections Division 1, Chapter 1, Subchapter 5, at 42, section 1374: Visitation (2019) <https://www.bscc.ca.gov/wp-content/uploads/Juvenile-Title-15-Effective-2019-1-1.pdf>.

<sup>15</sup> For the state system, the California Department of Corrections and Rehabilitation (CDCR) suspended in-person visitations and thereafter noticed a 27 percent rise in the number of calls placed compared to pre-pandemic numbers. The CDCR worked with its vendor to offer adults incarcerated free phone calls three days of the week during the month of April, and since then, reduced this to two days of the week. Since the free phone calls days were established, the average calls per day has seen an increase of 93 percent, suggesting that the costs are a barrier to connectivity with families. The CDCR also worked with its electronic messaging service vendor to offer reduced or free services for some populations. See California Department of Corrections and Rehabilitation, COVID-19 Response Efforts, Visiting and Communication <https://www.cdcr.ca.gov/covid19/covid-19-response-efforts/#VCMP> (last visited Nov. 6, 2020). However, the medical profession has stepped in as well to address the precarious COVID-19 dangers that exists in California's jails and prisons. See Kurtzman, L., University of California San Francisco, For Prisoners, Pandemic Hits with Greater Force, UCSF Programs Work to Protect Health of Prison Residents and Staff, While Fostering Easier Transition After Release, (Oct. 25, 2020) <https://www.ucsf.edu/news/2020/10/418876/prisoners-pandemic-hits-greater-force> (stating that “[i]ncarcerated people are five times more likely than the general public to get infected with the virus”).

### **III. THE OIR STARTS WITH THE PROPER TONE AND SCOPE BUT SHOULD BE EXPANDED TO PROPERLY PROTECT CALIFORNIA'S INCARCERATED POPULATION**

#### **A. Scope of Review Considerations**

The Commission states that the “main issue” to be addressed is how the agency should regulate the “rates, terms, and conditions” of these services provided to incarcerated people in California, to “ensure that they are just and reasonable.”<sup>16</sup> TURN believes that the scope of this question is warranted but urges the Commission to view its scope broadly to ensure it is defining the relevant IDCS services to fit current business models and services offerings, as well as the anticipated trends and evolution of the industry. Moreover, the Commission should acknowledge and investigate additional issues regarding service quality, consumer protections, and access to services.

As discussed further below, while it is clear that the Commission can and should address the rate reasonableness of local exchange and other intraLATA calling, it is also clear that, to effectively address the significant market failure present in this industry and the hardship among these vulnerable populations, the Commission must use its jurisdiction and authority to address other services such as interLATA in-state calling, video calling, IP enabled services, inside wire services and, possibly, others that are identified during the information gathering in this docket.

Moreover, in addition to the questions raised in the *OIR*, TURN suggests additional considerations for the Commission as the agency proceeds. For example, to establish regulatory boundaries, the Commission should request comment regarding how the industry currently determines “call end point” locations and whether there are alternative ways of distinguishing

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<sup>16</sup> *OIR* at 7.



interstate and intrastate calling to ensure California detainees and their families are protected. TURN urges the Commission to acknowledge that it is considering IDCS services at a time when the Federal Communication Commission (FCC) has recognized, based on “inmate calling service provider” annual reports analyzed by its staff, that approximately 80 percent of inmate calls are reported as intrastate and the service providers are charging “egregiously high intrastate rates across the country.”<sup>17</sup> The FCC has taken an approach that the “jurisdictional nature of a call depends on the physical location of the endpoints of the call” and not on area code or the NXX prefix of the telephone number or the credit card billing address.<sup>18</sup> However, for the purposes here, the Commission may consider confirming whether it will treat the location of IDCS calls as it treats the location of non-IDCS calls as local, intraLATA, interLATA, or long distance.

Second, the Commission should review how site commissions and related fees and payments between the service provider and facilities, at the county and local level, affect the rates charged for IDCS service and whether these should be an element in a future rate calculation. The Legislature prohibited site commissions (referred to as “concession fees”) for state facilities, limiting them to “zero for the 2010-11 fiscal year and thereafter.”<sup>19</sup> Yet, contracts for services

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<sup>17</sup> *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 8485, 8494, para. 26 (2020) (*2020 FCC ICS Report and Order*). A September 2020 joint FCC/NARUC letter to the National Association of Governors provides a detailed view of rates charged (first minute prepaid/debit rate and subsequent minute prepaid/debit rate) at site facilities in California such as detention centers, sheriff stations or departments, juvenile halls, jails. For example, the IDCS service provider for Clovis Police Department in Clovis California charges \$26.25 for a 15-minute phone call. Letter from Ajit V. Pai, Chairman, Federal Communications Commission, and Brandon Presley, President, NARUC, to Andrew Cuomo, Chair, National Governor’s Association and Asa Hutchinson, Vice Chair, National Governor’s Association (Sep. 22, 2020) <https://docs.fcc.gov/public/attachments/DOC-367049A1.pdf> (letter); <https://docs.fcc.gov/public/attachments/DOC-367049A2.pdf> (attachment with rate data).

<sup>18</sup> *2020 FCC ICS Report and Order*, 35 FCC Rcd at 8503-04, para. 53.

<sup>19</sup> SB 81 Section 32, California Session 2007-2008 (requiring the California Department of General Services to amend any contracts “that provide telephone services to wards and inmates in state facilities in order to limit the amount of state concession fees . . . to zero for the 2010-11 fiscal year and thereafter”).

between the service provider and county or local facilities continue to include these types of payments, and other elements such as signing bonuses or awards paid on the contract.<sup>20</sup> As discussed below, to determine a just and reasonable rate for these services, the Commission must investigate the extent to which these contract elements are passed through into the rates. The Commission should attempt to clearly break out these contract elements to ensure ratepayers are not shouldering the burden to support this business model. If this exercise cannot be completed due to lack of data or lack of cooperation among the service providers, the Commission should also consider analyzing industry cost data obtained from both federal and state sources to determine reasonable rates.<sup>21</sup> As described below, just and fair rate calculations should be reviewed broadly in light of the vulnerable populations of rate payers affected.

Third, in addition to the prisons and jails at the state or county levels, the Commission should consider service providers that serve other types of detention facilities, including those that house immigrant populations either through federal contracts with private facilities, or state or local facilities.<sup>22</sup> In addition to detention for civil immigration offenses, due to mandatory detention requirements under federal immigration laws, the potential to be charged with additional

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<sup>20</sup> For example, one county entered into a “revenue sharing contract” with a service provider, where the arrangement was for the service provider to give the county the greater of \$4.3 million per year or 97.5 percent of the monthly gross revenue derived from intrastate calls; where “no commission [would be] paid on revenue from interstate calls.” County of Orange Contract with Global Tel\*Link Corporation, MA-060-15010542 (executed Oct. 9, 2014).

<sup>21</sup> See generally *Rural Digital Opportunity Fund; Connect America Fund*, Order, 35 FCC Rcd 686, 697-701, paras. 3, 6, 23-28 (2020) (discussing FCC’s Cost Model process and presenting the methodology to calculate reserve prices for the Rural Digital Opportunity Fund); *Connect America Fund Phase II Auction Scheduled for July 24, 2018 Notice and Filing Requirements and Other Procedures for Auction 903*, FCC 18-6, at 68-69, paras. 210-211 (2018) (discussing reserve prices).

<sup>22</sup> CA DOJ reported that detainees experience “obstacles contacting family and other support systems,” in part because of, “the facility’s scheduled times for phone calls, the high cost of making calls, and technical barriers.” CA DOJ Immigration Detention Study at iv, 96-97, 125, 127. The Report further found that limited access to phone services resulted in barriers to adequate legal representation. *Id.*

criminal offenses subject noncitizens to mandatory detention that may result in placement at these facilities for months or years.<sup>23</sup>

The Commission should also consider state adult and juvenile psychiatric hospitals, to the extent this type of facility would not already be included in the Commission's approach to addressing detainee populations with disabilities.

Regardless of the location or type of facility, the market failure and public policy drivers for regulation remain the same as long as there are detainee populations that have no alternative but to rely on the IDCS and the providers that offer these services. Moreover, these market failures may reflect broad scale racial inequities<sup>24</sup> or perhaps unreasonable practices by these IDCS service providers that cut across state, county and local jurisdictions and would be difficult to review without the Commission's role to conduct a centralized review of these rates and practices.

The Commission should, therefore, broadly define the scope of its authority to review whether the IDCS services and rates charged for them in California at these facilities are just and reasonable.

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<sup>23</sup> CA DOJ Immigration Detention Study at 4.

<sup>24</sup> The Commission recently adopted a plan for environmental and social justice issues with several goals including the integration of equity and access considerations through the Commission's proceedings. CPUC, Environmental and Social Justice Action Plan (Feb. 2019) [https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/UtilitiesIndustries/Energy/EnergyPrograms/Infrastructure/DC/Env%20and%20Social%20Justice%20ActionPlan\\_%202019-02-21.docx.pdf](https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/UtilitiesIndustries/Energy/EnergyPrograms/Infrastructure/DC/Env%20and%20Social%20Justice%20ActionPlan_%202019-02-21.docx.pdf) (CPUC Environmental and Social Justice Action Plan).

## B. Order Instituting a Rulemaking Questions

1. *Should the Commission exercise its authority to regulate the companies that provide those telecommunication services to incarcerated minors and people in California, and if so, how?*<sup>25</sup>

The Commission should exercise its authority to regulate the companies that provide telecommunication services to incarcerated minors and people in California. As the *OIR* reflects, the Commission has authority over telephone corporations and TURN believes that the *OIR* correctly identifies that service providers that provide “communication services to people incarcerated” are telephone corporations.<sup>26</sup> However, IDCS have evolved far beyond their payphone and collect call roots,<sup>27</sup> to form a complicated billion dollar industry with many types of service providers and complex packages of service offerings.<sup>28</sup> This docket should analyze the types of services being offered, and the providers that offer those services, to ensure that the Commission is exercising its broad authority to properly protect some of California’s most vulnerable communications consumers.

In addition to its direct authority, the federal developments for IDCS services bolsters the Commission’s intent to regulate the service providers that provide intrastate IDCS services in California. As the *OIR* explains, the DC Circuit recently held that the FCC’s efforts to regulate

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<sup>25</sup> *OIR* at 7.

<sup>26</sup> *OIR* at 2. See also, Pub. Util. Code Section 234, (definition of “telephone corporation”) and D.20-04-008 (*Sprint/T-Mobile Merger* A.18-07-011) (broadly defining “telephone corporation” to include wireline and wireless carriers as public utilities pursuant to Pub. Util Code §216, 233, 234).

<sup>27</sup> *2020 FCC ICS Report and Order*, 35 FCC Rcd at 8533, para. 134 (asking whether ICDS regulations should evolve from the needs of payphone operators, “to recognize industry innovations.”); *See also*, *2018 Presentation by CPED Utility Enforcement Branch re Payphone Enforcement Program*, at p. 12 (noting that it only inspects payphones available to the public in common areas of detention facilities and that incarcerated services are provided in other ways and not currently reviewed under their jurisdiction) available here, [https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/Transparency/Commission\\_Meetings/Presentations/2018/062118ComMeeting.pdf](https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/Transparency/Commission_Meetings/Presentations/2018/062118ComMeeting.pdf).

<sup>28</sup> *OIR* at 1-2; See also, Wagner, *State of Phone Justice*, 2019.

intrastate calls went too far and that states have the authority to regulate the IDCS rates that the Court found, “raise serious concerns.”<sup>29</sup> Further, in the FCC’s most recent decision and letters to state regulators, the FCC has recognized its limitations to regulate these intrastate calls and acknowledges that state utility commissions should regulate intrastate call rates and ancillary fees.<sup>30</sup> The Commission is correct to answer the FCC’s call to states to take action to address “intrastate inmate calling services” and their “egregiously high” rates.<sup>31</sup> TURN supports the Commission’s careful review and encourages the Commission to consider regulations that will ensure just and reasonable rates, terms and conditions of intrastate IDCS regardless of whether the services are offered by interexchange carriers, interexchange resellers, competitive local exchange carriers (CLEC), Local Exchange Carriers, or providers of IP-based services.

The Commission may already be familiar with several IDCS service providers that have sought Commission designations as interexchange resellers or interexchange carriers.<sup>32</sup> Given the public policy considerations and the market failures raised above, the Commission has compelling reasons to regulate the providers of these services more closely than the lightly regulated non-dominant interexchange carriers holding similar authority, especially when these providers offer their services as part of a bundle. While the Commission has made policy and

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<sup>29</sup> *OIR* at 4-6 (internal citations omitted); *Global Tel\*Link v. FCC*, 866 F.3d at 402 (stating that the Communications Act of 1934 “left regulation of intrastate rates primarily to the states”). *See also*, *Global Tel\*Link v. FCC*, 866 F.3d at 403-04, 408-412 (discussing the FCC’s lack of authority to regulate intrastate rates).

<sup>30</sup> *OIR* at 5; *2020 FCC ICS Report and Order*, 35 FCC Rcd at 8486, para. 4; Letter from Ajit V. Pai, Chairman, Federal Communication Commission to Brandon Presley, President, National Association of Regulatory Utility Commissioners (NARUC), July 20, 2020.

<sup>31</sup> *OIR* at 6.

<sup>32</sup> For example, the *OIR* seeks comment broadly from providers of these services. GTL and Securus are two of the significant providers in the marketplace, each of whom are registered. D.17-08-029 (A.17-05-011) Securus Technologies Inc. (U-6888-C), citing to original decision D.04-05-049) granting nondominant inter- and intraexchange carrier authority); *Global Tel\*Link*, nondominant Interexchange carrier (U-5680-C).

legal determinations to support competitive entry into the California marketplace through pricing flexibility and deregulatory frameworks,<sup>33</sup> the Commission maintains its constitutional, statutory, and regulatory authority to adopt meaningful regulations in the face of significant market failure and consumer harm.<sup>34</sup> Recently the Commission reiterated its statutory mandate to ensure that Californians have “access to the communications network at all times for their ‘safety, health, comfort, and convenience.’”<sup>35</sup> There should be no controversy that the Commission has clear statutory and regulatory authority to protect access to these services when they are offered as a local exchange telecommunications services, defined broadly to include toll services, resold services, and other ancillary and related services, including regulation of the fees to access these services, by ILECs, CLECs and IntraLATA service providers.<sup>36</sup>

Moreover, as IDCS evolves to IP-based platforms these services should continue to be subject to the Commission’s jurisdiction.<sup>37</sup> This is the case whether these services are offered

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<sup>33</sup> See, for example, D.06-08-030 (*Uniform Regulatory Framework*, R.05-04-005) at pp. 156-157 (Adopting Uniform Regulatory Framework to provide pricing flexibility for basic voice service but pleading to remain “vigilant” in monitoring the voice market place and acting to protect consumers “no matter the technology employed to offer such service.”) See also, D.16-12-025 (Competition OII I.15-11-007) at p. 5 (reassessing impact of Commission’s deregulatory pricing on communications competition in California).

<sup>34</sup> See, D.20-09-012 (Emergency Disaster Relief, R.18-03-011) at p. 6 (Finding “broad constitutional and statutory authority over public utility telephone corporations” to enforce narrowly tailored protections for victims of disasters, citing Cal. Const., XII, §§ 1-6; Pub. Util Code §§216, 234, 451, 701, 761-2, 1001, 7901); Pub. Util Code §495.7 (require tariffs for specific telecommunications services); D.13-07-019 (authority to regulate telephone corporations).

<sup>35</sup> D.20-09-012 at p. 12 (citing Cal. Pub. Util. §§451 and 2896).

<sup>36</sup> *OIR* at 1-2 (citing Pub. Util. Code §§451 and 216); See also, Pub. Util. Code §1702 (authority for Commission to review whether rates and charges of a service are no longer just and reasonable for a particular public utility telephone corporation.) See also, D.07-09-018 and D.08-09-042 at p. 4 (adopting a “phased transition” toward pricing flexibility but recognizing it retained jurisdiction to consider complaints and to conduct an independent review of basic service rates).

<sup>37</sup> D.20-09-012 at p. 30-32 (finding VoIP providers fall under the definition of a “telephone corporation” and thus subject to consumer protection and police power regulation by the Commission; also finding that Section 239 defines “VoIP service” but does not remove VoIP providers from the definition of “telephone corporation.”)

over copper or fiber facilities or whether classified as information or telecommunications services. As with traditional IDCS, the FCC has also found that states have a vital role in the regulation of certain aspects of VoIP services.<sup>38</sup> Federal Courts have also found appropriate state jurisdiction regarding services offered over IP Enabled platforms, especially where federal authorities have divested themselves of authority and as consumers' reliance on these technologies for vital communications grows.<sup>39</sup> State legislative approaches to the issue of regulation IP-Enabled services are also evolving and stepping in where public policy finds market failure and a need to protect consumers.<sup>40</sup> While the Commission can find that its jurisdiction over IP enabled services is secure, whether some of these services can be segregated into inter and intrastate components, and thus directly regulated by the Commission as an intrastate service, is also evolving. In this docket, the Commission should review these services closely to find intrastate components and, where necessary, to determine where it may be

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<sup>38</sup> *In the Matter of Vonage Holdings*, WC Docket No. 03-211, 19 FCC Rcd22404, para 1); See, also, *In the Matter of Universal Service Contribution Methodology and Petition of Nebraska PSC* (WC Docket No. 06-122) Declaratory Ruling FCC 10-185, re. Nov. 5, 2010 (Finds state authority to collect universal service surcharges from VoIP providers to advance goals of universal service and cooperative federalism in §254 of Federal Telecom Act).

<sup>39</sup> *Mozilla Corp. v. FCC*, 940 F.3d 1 (D.C. Cir 2019) (finding that arguments to limit intrastate regulation of information services also overlooks the Communications Act's vision of dual federal-state authority and cooperation in this area specifically in areas where Congress and the FCC have preserved state authority to address areas such as public safety, consumer protection, affordability, universal service) but see, contra, *Minnesota PUC v. FCC* 483 F.3d 570 (8<sup>th</sup> Cir. 2007). Yet, as this Commission has recently found, Charter's challenge of the Minnesota regulations over VoIP and the Court's finding that the service is an information service and therefore protected from state regulation, has limited applicability here because it is an 8<sup>th</sup> Cir. finding that the Supreme Court failed to take on petition of certiorari and the 8<sup>th</sup> Cir's finding rests on the FCC's *policy* to forbear from regulation of information services, not a delegation of authority to preempt from Congress (D.20-09-012 at p. 24)).

<sup>40</sup> Pub. Util. Code §285 (surcharge VoIP services to support universal service goals); Pub. Util. Code §710(h) ("This Section [limiting CPUC jurisdiction over IP-enabled services] shall remain in place until January 1, 2020 and as of that date is repealed..."); See also, AB 1366 (2019, Daly and Obernolte) (attempting to renew VoIP preemption provisions and failing); See also, SB 822 (Ch. 976, Stats 2018, codified at Civil Code §3100, et seq) (Legislative finding that, "Almost every sector of California's economy, democracy, and society is dependent on the open and neutral Internet that supports vital functions regulated under the police power of the state...").

appropriate to determine a safe harbor or jurisdictional allocation mechanism to ensure California consumers are protected.<sup>41</sup>

i. New Issues to Consider

In addition to broadly capturing the types of services and service providers to be included in the Commission's analysis here, TURN urges the Commission to consider additional regulations beyond the regulation discussed in this *OIR*. For example, TURN understands that the quality of these services, including dropped calls, poor call quality, failure to connect, video and sound failure, along with many other service quality problems, impact the quality of the communications.<sup>42</sup> These experiences by IDCS users, interfere with and limit the benefits that detained person receives from the use of these services to connect with family, legal counsel, and other support systems.

TURN also urges the Commission to look at the system design and how the service offerings may “over promise” availability of these services relative to the number of phones and design of the systems. This system design often includes on-site and off-site facilities provided for the families and legal counsel to use these services. The Commission should review these issues and

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<sup>41</sup> “Safe harbors” traditionally apply to jurisdictional separation analysis for the purpose of calculating high cost support, surcharge percentages on jurisdictional revenue and other matters where it is important to identify intrastate portions of traffic, even if it is “impossible” or burdensome to identify intrastate traffic through the call path. TURN urges the Commission to undertake a similar analysis here to determine rate and fee caps on intrastate portions of the IDCS traffic. See, for example, Pub Util. Code §285 (safe harbor analysis to calculate surcharges on intrastate revenue for VoIP services).

<sup>42</sup> See, for example, Nicole Lewis and Beatrix Lockwood, “Can you hear me now?” The Marshall Project, December 19, 2019 (carriers charge high rates for video calling, but service quality is poor), last visited 11/9/20, <https://www.themarshallproject.org/2019/12/19/can-you-hear-me-now>.



take comment to ensure detained individuals and their families have nondiscriminatory access to communications services.<sup>43</sup>

TURN also urges the Commission to ensure that it adopts and enforces general consumer protections to support these services, including specific regulations regarding late payment terms and conditions, prepaid deposits, necessary disclosures in writing, in language,<sup>44</sup> and as recordings at the time of use of the services. It is critical that these families with no other choice but to use these services and service providers are protected.

Furthermore, TURN supports a broad review in this proceeding so that the Commission may review and understand the possible racial divisions, inequities and discriminatory impacts the current business practices and unreasonable rates, terms and conditions, have on low income families, communities of color, limited English speaking consumers and other vulnerable populations.<sup>45</sup>

#### ii. Protecting Minor's IDCS Service Access

TURN further supports the regulation of rates for IDCS services provided to minors as this is a vulnerable population. In light of the highly vulnerable nature and specific needs of this population, TURN also urges the Commission to consider stricter regulations on services offered to minor detainees and their families. The Commission should consider the role that IDCS plays

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<sup>43</sup> Cal. Pub. Util. §453(c) (No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.).

<sup>44</sup> CA DOJ Immigration Detention Study at iii (discussing language barriers in immigration detention centers).

<sup>45</sup> The Commission identifies sets of communities for its environmental and social justice considerations, this includes communities that are underrepresented in the policy setting or decision-making process. CPUC Environmental and Social Justice Action Plan; CPUC, Environmental and Social Justice Action Plan, Status Report (May 2020) [https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/News\\_Room/NewsUpdates/2020/ESJ%20Action%20Plan\\_Status%20Update%20May%202020%20\(rev%205.18.2020\).pdf](https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/News_Room/NewsUpdates/2020/ESJ%20Action%20Plan_Status%20Update%20May%202020%20(rev%205.18.2020).pdf).

to support the rehabilitative goals of facilities that house minors as it studies these services and the rates, terms and conditions paid by the families of detained minors.<sup>46</sup> Detained or incarcerated minors have a heightened need of support from family, teachers, community members and legal counsel, requiring access to IDCS services that are not cost-prohibitive to them or to their families. Moreover, as a result of restrictions on in-person visitation at these facilities due to COVID-19 spread concerns, families must lean on costly IDCS services to support their youth even more which further exacerbates the struggles of these families at a time when the entire state is living through the economic and health effects of the pandemic.

iii. Other State Action for IDCS services

Commission action here would be consistent with state-level action taken in other states for correctional facility communications. For example, Alabama,<sup>47</sup> Minnesota, New Jersey, Ohio, and others have adopted various forms of regulations for these types of communications.<sup>48</sup> Some

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<sup>46</sup> California Welfare and Institutions Code Section 202.

<sup>47</sup> Alabama Public Service Commission adopted reforms that include tiered intrastate rate caps and restricts some ancillary service charges at established caps. *Further Order of Alabama Public Service Commission Adopting Revised Inmate Phone Service Rules*, Docket 15957 (Alabama PSC July 2014). The Alabama PSC further requires service providers to obtain a special certificate prior to offer to bid or providing services to confinement institutions in the state. Alabama Public Service Commission, “Inmate Phone Service Providers Info and Materials,” <http://psc.alabama.gov/telecom/Engineering/documents/inmate.htm> (last visited Oct. 21, 2020).

<sup>48</sup> The states listed here, and others have enacted legislation and regulations for these communications before and after the FCC adopted regulations.

states impose rate caps, several require tariff filings,<sup>49</sup> others restrict fees,<sup>50</sup> while others prohibit site commissions.<sup>51</sup> Below we discuss the rate and fees in greater detail.

Therefore, the Commission should explore the direct authority over service providers, the categories under which the current IDCS service providers may be classified as, and in doing so, it would be bolstered by the fact that the FCC and the DC Circuit, along with other states have identified a regulatory gap that the state utility commissions must fill for IDCS services.

*2. Should the Commission set rate caps for intrastate calling for incarcerated people, including video calls?<sup>52</sup>*

The Commission should consider a broad set of regulatory tools to ensure that the rates charged by the service providers for IDCS are just and reasonable. This toolkit should include rate caps for intrastate calling. The Commission should study the market as described above, but also review the rate setting methodologies to determine the appropriate rate caps for IDCS services.<sup>53</sup> For example, a study of families with incarcerated family members identified that 69

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<sup>49</sup> See, for example, Iowa Utilities Board Docket No. RMU-2017-0004, Rule Making Regarding Inmate Calling Rate Caps, Order Terminating Rule Making (Jan. 2, 2019). See, also, Iowa Utilities Board Docket No. TF-2019-0033 and related Securus Tariff Filings, July 16, 2020.

<sup>50</sup> Rhode Island prohibits telephone service providers from charging rates for calls that are not comparable to calls made from non-prison settings; and prohibits “correctional institution impose a surcharge for telephone usage by inmates in addition to the charges imposed by the telephone service provider.” RI Gen L §42-56-38.1 (2016).

<sup>51</sup> New Mexico prohibits contracts from including a “commission or other payment to the operator of the correctional facility or jail based upon amounts billed by the telecommunications service provider” for calls made by inmates in the facilities. NM Stat §33-14-1 (2013).

<sup>52</sup> *OIR* at 7.

<sup>53</sup> There are numerous external studies that have data for sections of the IDCS market. *2020 FCC ICS Report and Order*, 35 FCC Rcd at 8494-95, para. 26 (explaining FCC staff analysis based on provider submitted information); Prison Phone Justice, Historical California State Prison Phone Rates and Kickbacks (last visited Nov. 8, 2020) <https://www.prisonphonejustice.org/state/CA/history/>.

percent of families agree that the most frequent barrier to maintain contact with the family member is the high cost of phone calls.<sup>54</sup>

i. Reviewing Upward Pressures on Rates

As part of the review, the Commission should consider the upward pressure to rates charged that may come from site commissions, signing bonuses, time of use charges, or “initial minute charges.” For example, the Legislature has prohibited state facilities from entering into contracts containing site commissions, but county and local facilities may still include these elements in their agreements with the providers.<sup>55</sup> The Commission should investigate how this difference in the treatment of site commissions and other fees paid to the facilities impacts the rates charged at these facilities, by comparing rate data across the different types of facilities. Through this comparison, along with other cost data, the Commission can note where a service provider may be motivated to pass through the costs of commissions and signing bonuses through the end user rates to protect profit and revenue generation at those facilities.

As the Commission looks at different rate methodologies, it should gather cost data not only from the carriers offering IDCS themselves, but also look at industry costs that will allow the Commission to compare data and ensure that IDCS carrier costs related to site commissions, signing bonuses, call surveillance technologies, and other “non-communications services” costs are not incorporated into the cost review.<sup>56</sup>

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<sup>54</sup> Saneta deVunono-powell, Chris Schweidler, Alicia Walters, and Azadeh Zohrabi. Who Pays? The True Cost of Incarceration on Families. Oakland, CA: Ella Baker Center, Forward Together, Research Action Design at 30 (2015).

<sup>55</sup> SB 81 Section 32, California Session 2007-2008.

<sup>56</sup> TURN acknowledges that the D.C. Circuit Court remanded the FCC’s earlier decision to use industry average data because it prevented carriers from being fairly compensated. However, the FCC finds, and TURN urges the Commission to also find, that industry data can still be part of a meaningful and careful

## ii. Video Calling Services

Specifically, on the issue of video calling services, the Commission is correct to raise this issue broadly. COVID related concerns and increased social distancing measures at all facilities may be a catalyst for any rise to video calling services. However, even before the pandemic, video calling had several problems, including costs and poor service quality.<sup>57</sup>

Video visitation services can be administered either through non-IP based technologies or IP-based technologies. As discussed above, the Commission can move forward to investigate the reasonableness of rates paid by the end user, regardless of the technology used to provide the services. In some facilities, such as in some juvenile detention centers, video calling or video visitation services are part of a complex set of calling services offered by the service provider. In certain arrangements family visitors drive to an offsite center and call the minor set up for the call within the facility, or the family enters the facility itself and communicates with the minor who is set up in a distant room (a scenario that cuts down on logistics to mix incarcerated or detained individuals with the external public). However, there are other scenarios where the family may call from home and communicate with the minor who is set up for a video call inside the facility. The Commission should review, at least at a higher level, how these different network and system configurations impact costs, and how those costs are flowed through to the consumer, as well as how these configurations may impact the jurisdictional treatment of the video calls.

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consideration of carrier costs and setting just and reasonable rates. *2020 FCC ICS Report and Order*, 35 FCC Rcd at 8514-15, para. 87, citing to *GTL v. FCC*, 866 F.3d at 414.

<sup>57</sup> Lee, T.B., ARS TECHNICA, Jails are replacing visits with video calls—inmates and families hate it (May 4, 2018) <https://arstechnica.com/tech-policy/2018/05/jails-are-replacing-in-person-visits-with-video-calling-services-theyre-awful/>.

3. *Should the Commission limit the types of additional fees providers can charge users of calling services for incarcerated people?*<sup>58</sup>

In addition to rates, terms and conditions of these services, the Commission should limit the additional fees service providers charge for IDCS services. These additional fees are often referred to as “ancillary fees.” To this end, the Commission should study the various ancillary fees charged for all the calling options referenced in the *OIR*: collect, debit account, or pre-paid.<sup>59</sup> In addition to the Commission’s authority described above the FCC leaves states to regulate ancillary fees for intrastate calls.<sup>60</sup> Therefore, the Commission should determine the impact of these fees on IDCS service affordability to ensure that these fees do not increase rates, thereby addressing rates that are not “just and reasonable.” For example, the FCC has identified several types of fees that it has determined must be subject to rate caps and regulation to ensure that the overall costs of these services for detainees and their families are not “unjustly or unreasonably high.”<sup>61</sup>

While the FCC has attempted to extend its authority to preempt state regulation of these fees for interstate services and services that are “jurisdictionally mixed,” the FCC leaves the states to regulate these fees for intrastate calling.<sup>62</sup> As discussed above, the FCC also acknowledges that, “the vast majority of inmate calls- roughly 80%- are reported to be intrastate.”<sup>63</sup> Further, the

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<sup>58</sup> *OIR* at 7.

<sup>59</sup> *OIR* at 6.

<sup>60</sup> *2020 FCC Interstate Inmate Calling Services R&O and FNPRM*, 35 FCC Rcd at 8486, 8489-90 paras. 2, 12-13.

<sup>61</sup> *2020 FCC Interstate Inmate Calling Services R&O and FNPRM*, 35 FCC Rcd at 8486-87, 8497-8500, paras. 5, 33-46; FCC, Consumer Guide, Telephone Services for Incarcerated Individuals (revised Oct. 27, 2020) [https://www.fcc.gov/sites/default/files/inmate\\_telephone\\_service.pdf](https://www.fcc.gov/sites/default/files/inmate_telephone_service.pdf).

<sup>62</sup> *2020 FCC Interstate Inmate Calling Services R&O and FNPRM*, 35 FCC Rcd at 8500-01, para. 47.

<sup>63</sup> *2020 FCC Interstate Inmate Calling Services R&O and FNPRM*, 35 FCC Rcd at 8494-95, para. 26.

FCC’s preemption even for jurisdictionally mixed services is limited to a narrow set of circumstances where the state regulation conflicts with federal law, interferes with “valid federal rules” and the services are impossible to segregate between intra- and interstate calling. In light of the FCC’s narrow preemption authority, TURN urges the Commission to find broad authority here.

Setting reasonable per-minute rates and rate caps does not go far enough to ensure that the total cost of these services is just and reasonable for families. The Commission should aggressively view how cost burdens can shift through the use of these non-recurring fees for the user who is already paying high rates for IDCS services. A study of families with incarcerated family members showed that additional fees make up a third of all the costs that families pay for phone calls with their loved ones.<sup>64</sup> For these reasons, the Commission should take a broad approach to study and determine how to limit these fees. Commission should study single-call service fees, automated payments service charges, third party fees, live agent fees, and paper bill fees, as well as late payment fees, return check charges, and any other fees for calls that service providers identify as intrastate calls.

*Single-call service fees.* The Commission should review single-call service fees such as when a consumer places a collect call to a family member on a per-call basis and not as part of a service account. In these call scenarios, the service provider can identify whether the call place is an intrastate call and the FCC has stated that in these cases, the ancillary service charges are outside of its reach.<sup>65</sup>

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<sup>64</sup> Saneta deVuono-powell, Chris Schweidler, Alicia Walters, and Azadeh Zohrabi. Who Pays? The True Cost of Incarceration on Families. Oakland, CA: Ella Baker Center, Forward Together, Research Action Design at 46 (2015).

<sup>65</sup> 2020 FCC Interstate Inmate Calling Services R&O and FNPRM, 35 FCC Rcd at 8497, paras. 33-34.

*Automated payments.* The Commission should review automated payments charged by service providers after the calls are placed. Here, a service provider could potentially confirm that the user placed an intrastate call and then assess the ancillary service charge. The FCC again refrains from regulating these fees given the jurisdiction limitations.<sup>66</sup>

*Third party fees.* Relatedly, the Commission should study third party fees charged to transfer money or process financial transactions to make payments to inmate calling service accounts to pay for intrastate calls. Companies such as Western Union or MoneyGram charge fees to inmate calling service providers, who then pass the fees to IDCS users. For those calls where the fee is charged after the call is placed, the Commission should seek to study whether and how to limit these fees.

*Live agent fees.* The Commission should further scrutinize the live agent fees for intrastate calls when a live agent is used or when a live agent is used after an intrastate call is made. Currently the FCC limits the fees to \$5.95 per interaction, regardless of the number of tasks the live operator completes in a single session.<sup>67</sup> For the calls that the service provider identifies as intrastate, the Commission should consider these fees.

*Paper bill fees.* To the extent that a service provider identifies that a customer made an intrastate call, the Commission should study and make determinations about that the paper bill service charges. The FCC acknowledges that these fees for intrastate calls in this scenario are beyond its regulatory authority.<sup>68</sup>

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<sup>66</sup> 2020 FCC Interstate Inmate Calling Services R&O and FNPRM, 35 FCC Rcd at 8498, para. 37.

<sup>67</sup> 2020 FCC Interstate Inmate Calling Services R&O and FNPRM, 35 FCC Rcd at 8499-500, paras. 42-44.

<sup>68</sup> 2020 FCC Interstate Inmate Calling Services R&O and FNPRM, 35 FCC Rcd at 8500, paras. 45-46.



4. *Should the Commission act to protect calling services for incarcerated people with communication disabilities by limited charges for inmate calling services calls involving the use of text telephones (TTY)?*<sup>69</sup>

The Commission should study and limit the rates of IDCS services for incarcerated people with communication disabilities and challenges. TURN suggests that the Commission broadly study all disability-related communications technologies offered by these service providers so that all incarcerated and detained individuals in California, regardless of disability, can have equal access to affordable and effective communications services.<sup>70</sup> As discussed above, TURN urges the Commission to identify and address the unique needs of specific stakeholder populations such as minors. Here, the Commission should build a record that identifies the needs of detainees with disabilities and adopt special rules to address those needs. TURN looks forward to addressing this issue further.

#### **IV. PROCEDURAL ISSUES**

##### **A. Categorization**

TURN urges the Commission to establish just and reasonable rates for communications services for individuals in detention facilities and, therefore, supports the preliminary categorization of ratesetting.

##### **B. Need for Hearing**

TURN supports the Commission's preliminary determination that evidentiary hearings may be necessary. However, TURN suggests that the Commission revisit this determination as

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<sup>69</sup> OIR at 7.

<sup>70</sup> Pub. Util. Code §453

part of the “information gathering” phase of this proceeding and request further comment from parties as to the need for hearings at that time.

TURN further requests that the Commission hold public participation hearings in this proceeding. The Commission acknowledges that these services provide a critical lifeline for detained individuals in California and their families.<sup>71</sup> Further, the Commission states that low income families and families of color face disproportionate rates of incarceration and detention.<sup>72</sup> As a result, these are the vulnerable communities that face undue financial burden from the unjust and unreasonable rates charged by these monopoly providers for these critical communications services. The thousands of families impacted and their representatives, generally, do not have the resources to participate in this proceeding. Therefore, TURN strongly urges the Commission to provide opportunities to hear directly from these families, including those formerly incarcerated, and other advocacy groups that represent adult and minor detainees to understand first-hand the crises created by the business practices of these service providers.

### **C. Schedule**

With the addition of public participation hearings to be held sometime during the first quarter of 2021 and workshop opportunities to discuss staff and stakeholder group proposals, TURN supports the schedule as proposed in the *OIR*.

## **V. CONCLUSION**

TURN supports the Commission’s efforts to take up the call. As presented above, through the generation of a robust record, the Commission can develop its understanding of the IDCS

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<sup>71</sup> *OIR* at p. 3, 5.

<sup>72</sup> *OIR* at p. 3.

market in California and broadly address the failures that so many rate payers, but specifically, families with incarcerated or detained members, have lived through for some time. TURN agrees that in many cases IDCS users do not choose their calling provider, and often, unrestricted rates or fees for these services result in unreasonably high phone bills. The Commission should consider its role broadly and exercise its jurisdiction over IDCS service providers.

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Respectfully Submitted,

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